Message

From: Faeth, Lisa [Faeth.Lisa@epa.gov]
Sent: 11/9/2018 4:13:06 PM
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BNA DAILY ENVIRONMENT REPORT ARTICLES

Product Warnings on Chemical Compounds to Begin in California (1)

By Emily C. Dooley

Posted Nov. 9, 2018, 9:10 AMUpdated Nov. 9, 2018, 9:46 AM

Businesses that sell or use products in California that contain traces of two types of perfluorinated compounds will have to post warnings starting Nov. 10 saying exposure could cause reproductive harm or birth defects.

Likely House Chairwoman to Fight Moves to 'Suppress' Science

By Pat Rizzuto

Posted Nov. 8, 2018, 3:52 PM

Rep. Eddie Bernice Johnson (D-Texas), who is expected to chair the House science committee after Democrats take control in January, said she will protect scientific research from political pressures and special interests.

New Congress Will Bring Oversight, Policy Changes (Podcast)

By David Schultz

Posted Nov. 8, 2018, 9:53 AM

Congress will look very different when it gavels in next year, with a new House Democratic Majority and an expanded Republican Senate.

CHEMICAL WATCH ARTICLES

UK scientists give vanadium contamination warning

8 November 2018 / Ecotoxicology, Exposure modelling, Metals, Mining & minerals, United Kingdom

A group of UK-based scientists has called for improvements in the risk assessment of the element vanadium as an environmental contaminant, describing emerging sources as a "growing problem requiring wide-scale intervention".

The rate of its release is increasing, leading to accumulation in the environment and increased likelihood of acute exposure, the scientists say.

Vanadium can disperse and persist in the environment to a greater degree than other contaminants, such as arsenic or phosphorus.

"The element also exhibits multiple interactions within surface environments including complexing to organic and inorganic matter in sediments and uptake into flora and fauna," they say.

However, our understanding of the geochemistry of the element remains "relatively poor" compared with other contaminants.

The scientists are affiliated with state-funded research organisation CEH, charity the Craigencalt Rural Community Trust and five UK universities.

They describe vanadium as "long confined to the annals of regulatory history" following the reduction of emissions from certain types of fossil fuels in the 1970s.

However, global production of the element has doubled in the past 15 years, driven by demand for high grade steel, they say in *Environmental Science & Technology*.

Additionally, production is expected to increase further with development and commercialisation of vanadium "redox flow" batteries, prized for their ability to charge and discharge simultaneously. It is not clear from the article which forms or compounds are most problematic.

The scientists call on industry to produce best practice guidance on the management of vanadium-contaminated wastes to reduce the likelihood of uncontrolled discharges.

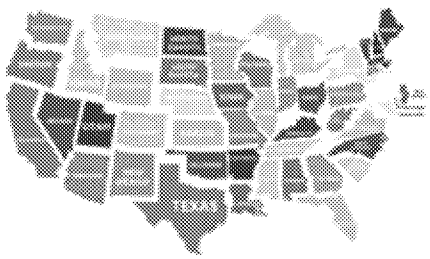
Further Information:

- Viewpoint article (open access)

US midterms 'an opportunity' for state-level chemical advocacy

Democrat gains, less gridlock could mean more action on chemicals

8 November 2018 / United States



A US NGO focused on state-level chemicals policy sees the results of this week's midterm elections as "an opportunity" for reduced gridlock and increased action on substances of concern.

Tuesday night saw Democrats expand their control not only in the federal House of Representatives, but also in state legislative and gubernatorial races nationwide (see box).

And with much of the current motion on chemical regulation taking place on the state level, these new – and newly consolidated, with both chambers holding majorities of the same party in all cases but Minnesota – state legislatures are being eyed by consumer and environmental advocates.

Gretchen Salter, interim director of the NGO Safer States, told Chemical Watch that the advocacy community sees the state-level election results as an opportunity. New legislators will be looking for information on the more complicated aspects of chemicals policy, and this is a chance for stakeholders to educate new legislators on both sides of aisle, she said.

Broadly speaking, Democrats tend to have a greater appetite for environmental protection legislation. And while the support for many proposed state chemical regulations has been bipartisan in recent years, having unified majorities across both chambers tends to allow legislation to move forward with less friction.

Ms Salter highlighted Maine, Michigan and Minnesota as states where activity could be reignited. These states used to do more in the chemical regulation space, before their recent political gridlock, she said.

In Maine, for example, Democrat Janet Mills is projected to replace Republican Paul LePage as governor.

Mr LePage made headlines in 2017 when he vetoed a measure (LD 182) prohibiting the use of chemical flame retardants in upholstered furniture. It was only after the state's Democratic House and then-Republican Senate cooperated to override his veto that the law moved forward.

After Tuesday's elections, however, both chambers of the legislature are in Democratic control.

'Voting on PFAS policy'

Ms Salter also pointed out that chemical issues are becoming an influencing factor in voting decisions, which should lead to increased activity from those who campaigned on those issues.

In both North Carolina and Michigan, for instance, PFAS contamination became a talking point on the campaign trail for some state-level candidates.

GenX and other per- and polyfluoroalkyl substances (PFAS) have become a major campaign issue, she said. "We're expecting to see some movement on this issue because people are beginning to vote on PFAS policy."

PFASs have remained in the spotlight throughout the year at both the state and federal level, attracting focus from both sides of the aisle.

Two bills to restrict PFASs, for instance, even have bipartisan support in the more polarised federal Congress. Many states that have passed PFAS restrictions have done so with help from both parties.

State power shifts

After the 6 November midterm elections, Republicans hold the majority across both chambers in 30 legislatures, whereas Democrats control 18. They each controlled 31 and 14 before the elections, respectively.

Legislatures have seen a change in power in six states; in all but one of these, the change favoured Democrats:

- **New Hampshire:** both the House and the Senate flipped from Republican to Democrat, although the governorship remains with a Republican;
- **Colorado:** the House flipped from Republican to Democrat;
- **New York:** the Senate flipped from Republican to Democrat (though it was previously controlled by a minority-led coalition);
- **Maine:** the Senate flipped from Republican to Democrat;
- **Connecticut:** the Senate flipped from Republican to Democrat;
- **Minnesota:** the House flipped from Republican to Democrat (making it the only state in the US with a split legislature); and
- **Alaska:** the House flipped from Democrat to Republican.

This rise of Democratic power on the state-level was mirrored by the races for governor. While the Republicans still hold more gubernatorial seats than the Democrats, six flipped from Republican to Democrat: Illinois, Kansas, Michigan, New Mexico, Wisconsin and Nevada.

The more active states when it comes to chemical regulation – such as California and Washington State – saw no significant shifts of power. California has a new governor: Gavin Newsom, who, like his predecessor Jerry Brown, is a Democrat.

Lisa Martine Jenkins

Americas reporter

Related Articles

- Maine bans all flame retardants in upholstered furniture
- US House committee convenes hearing on PFASs

Annex VIII: theory and practice

With just over a year until the first deadline, how is the new harmonised system for poison centre information shaping up?

Global Business Briefing, November 2018

The halfway point has passed between the publication in March 2017 of Annex VIII of the classification, labelling and packaging (CLP) Regulation, which seeks to harmonise the information industry provides to national poison centres about the mixtures it puts on the European Economic Area (EEA) market, and the first of three deadlines for registration on 1 January 2020. But how well is the transition working out in practice?

Stakeholders have been working with Echa since the first stakeholder workshop in 2010 and they continue to hold regular meetings on key issues. Jan Robinson, director of product regulations at CEPE, the European council of the paint,

printing inks and artists' colours industry, and chair of the Downstream Users of Chemicals Coordination group (Ducc), says that industry supports harmonisation because it will:

- improve poison centres' ability to react to incidents;
- reduce the administrative burden of placing products
- on the market in multiple member states; and
- help generate European-level statistics about products
- involved in incidents and thus where risk management measures are needed.

"We have been on board with the goal of getting a workable and proportionate system and to give the European Commission and then Echa the view from industry about what will work, the reality of the product and what they need to know from our side," she says. However, the requirements industry is now facing are "quite complex and and we see quite some challenges to be ready on time by the end of next year".

Annex VIII runs to ten pages and explains Article 45 of CLP Regulation, which itself is only ten lines long. Individual member states have implemented it in different ways, causing burdens on industry.

Not everything harmonised

Daniel Sompolski, scientific officer at Echa, stresses that the annex harmonises the information requirements and the data format but not the submission process. Echa will run a central system to send notifications to member states but individual states' systems may continue in parallel. The notification requirements will apply to mixtures classified for health and physical hazards, but not those which are classified only for environmental hazards.

At present, says Mr Sompolski, the 'duty holders' with notification obligations are the importers and downstream users, including (toll) formulators and repackagers. Distributors, including relabellers, rebranders and retailers, "are a grey area". There have been recent discussions in Caracal, the meeting of the competent authorities for REACH and the CLP, about whether obligations should extend to them too. For now, the feeling is that they should not, but this may change, he says.

Exempting distributors, Ms Robinson notes, makes it hard to capture information when a product is rebranded by a company with no obligation to submit information. Some member states want to redefine rebranders as downstream users "but this has huge ramifications for the rest of REACH and CLP".

The Commission aims to solve this problem by either naming the original formulator as a duty holder and requiring information to be passed back up the supply chain or to have distributors commit to a contractual arrangement to perform the submission for the rebranded product.

"This seems the best option with the legal text we have, but it is unclear if it will work in long supply chains or if you can hold the original downstream user accountable if a distributor seven steps removed from it in the chain does not make a submission," says Ms Robinson.

"Notification is not a one-off task," says Mr Sompolski. "When products, packages or names change, the poison centres must be notified. You must have a valid notification at all times and updates must be made before product is changed."

Registration deadlines

Annex VIII envisages three registration deadlines for different mixtures, defined by end use:

- 1 January 2020 for consumer uses;
- 1 January 2021 for industrial uses; and
- 1 January 2024 for consumer uses.

A transition period will then run to 1 January 2025. Until then, any notifications made under the old system to national authorities will remain valid but any changes must be made in the new system. In practice, Mr Sompolski and Ms Robinson agree, the deadlines are not quite so straightforward. Because they are determined by end use, if a mixture intended for industrial use, say, ends up in someone else's mixture for consumer use, the deadline changes accordingly.

"Most raw materials will probably be notified by default for the first deadline, because chemical producers can't be sure their products won't be used in consumer products," Ms Robinson says. This will mainly be an issue for chemical producers, she adds; downstream users may benefit from the existence of submissions for the mixtures they use.

Limited submission is possible for industrial use-only formulations, in which only safety data sheet (SDS) information is required, Ms Robinson adds. The trade-off is the need for a 24/7 phone number, so that poison centres can get information in an emergency. "Not every company can do this, certainly not in all the local languages in every country where their mixtures are marketed. So some large CEPE members have said that they may go for the full submission anyway – which may surprise the poison centres."

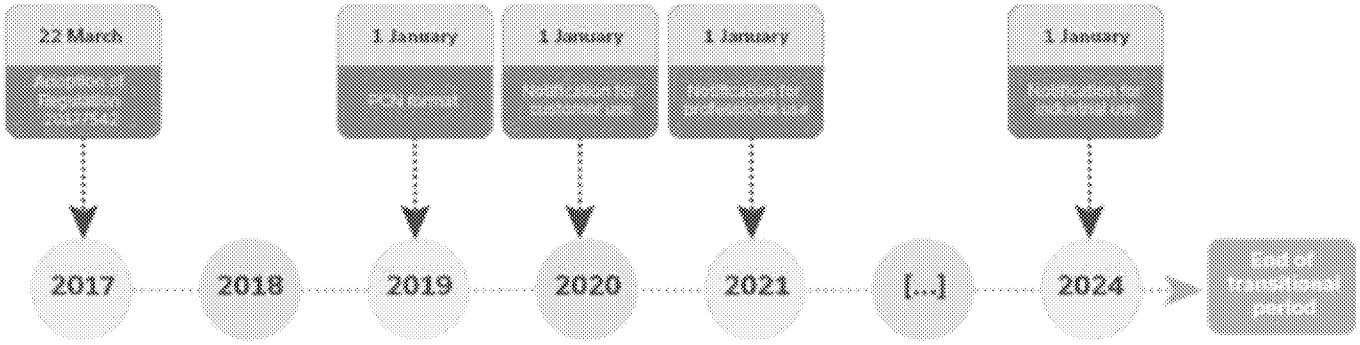
Handling UFI requirements

There are four elements in the standard information requirements, Mr Sompolski notes:

- submitter details;
- mixture information, such as hazard classification, toxicological information, pH and colour;
- the unique formula identifier (UFI);
- product information, notably the packaging type.

Some of the details, particularly in the first category, are very basic, but there are also some entirely new requirements within them, such as full composition information and especially the UFI. This is a 16-character code linking the product on the market to information submitted about it. It informs poison centres what composition is behind the mixture, thus getting rapid information to them in an emergency while still protecting confidential business information (CBI).

Annex VIII requires the UFI to be placed on the label of the mixture and discussions are ongoing about whether it could be placed on the packaging instead. The Commission, says Ms Robinson, "is trying to find the right wording to clarify this without causing unforeseen problems".



On industrial formulations and those without a package, she and Mr Sompolski agree, the UFI could be on the SDS, "but on other mixtures, the UFI will change more often than the SDS and we don't want to have to regenerate the SDS every couple of weeks. This also involves the ongoing amendment to the SDS rules set out in Annex II of REACH, so it is a complex matter," she says.

CEPE members have already been trying out Echa's UFI generator, says Ms Robinson. This can only handle numeric codes, however, so internal alphanumeric formulation codes probably cannot be imported and a lot of fields are needed to store the information in the in-house IT system.

The workability issues are the most complex ones, in industry's view. "The final requirements only crystallised very soon before the Regulation was adopted and several sectors began to see problems arising if they tried to apply them in practice,"

Ms Robinson said. These include:

- whether the same level of detail is needed for mixtures-in-mixtures (MIMs), especially if they do not end up in a mixture within the scope of CLP Article 45;
- which UFI goes into the submission when downstream users use similar materials interchangeably, like solvent blends from different suppliers that become a single raw material, plus how often it has to be updated; and
- how to deal with mixtures like petroleum products and construction chemicals that are made to a specification rather than a recipe, and with inherent batch-to-batch variability which might exceed the concentration bands laid down in Annex VIII.

The Commission has appointed contractors to work on case studies in various sectors and the results should be out by the end of 2018 for a workshop in early 2019, then a final report to the Commission, which may then draft some amendments. However, this process is already running a year late and industry is concerned about them getting through in time for the first registration deadline.

Portal coming soon

Echa, says Mr Sompolski, is developing the poison centres notification (PCN) portal for data submission. The first version will be launched in the beginning of 2019, allowing simple receive-dispatch functionality. Version 2, with more advanced features, is due in Q4 2019, with at least one more to follow after the first notification deadline. In parallel, the agency has worked on a harmonised format, which structures the information companies have to submit. The first version of this was released in April and an ongoing validation pilot on the format has yielded 90-95% positive feedback.

Industry, Ms Robinson says, is fully supportive of the PNC portal but concerned that the most important functionality will only be available shortly before the deadline. Equally importantly, member states will not have to accept central submissions – although an informal survey has not found any that do not intend to – and will still have discretion to decide if they require anything else before permitting a mixture onto the market. This may include manual checks and fees to pay for the poison centres to operate. Since then, soaps and detergents industry association Aise has written to Caracal, asking for the first deadline to be postponed by a year, because none of the parties are ready to implement the changes in time.

"In early 2018 Ducc published a position paper that was used in Caracal discussions, saying that these were unacceptable threats to the success of implementation," says Ms Robinson. "We have since had some welcome clarification from the Commision about what is and isn't in scope of Annex VIII. Member states can't require additional information for the same purposes or ask for more than Annex VIII requires."

One means of addressing this particular issue is to have automated validation rules, so that the system automatically tells a submitter whether or not his dossier is acceptable. A working group was formed this summer between the Commision, Echa, poison centres and other industry stakeholders and is now seeking to get these rules ready for the PNC portal, Ms Robinson says.

"The requirements of Annex VIII are certainly not perfect and some of the issues in it make it difficult or even impossible to comply in some cases" Jan Robinson, CEPE

A longer-term worry is that only 43% of the appointed bodies and poison centres expect to be ready to accept submissions before the first deadline, she adds. Some companies fear submissions stopping dead and their mixtures being left in legal limbo. "It is really important that the validation rules don't go beyond the legal text and block submissions that are legally valid, even if they are not technically perfect," Ms Robinson says.

Industry has also been involved in developing the product categorisation manual for Annex VIII and Ms Robinson thinks the system is fit for purpose. Ducc wants to keep the number of categories to a minimum, especially in sectors with a low number of poisoning cases, as this can confuse the statistics. It will be testing the categories as part of the portal pilot. There is a fine balance to be struck, in her view, between too much and too little.

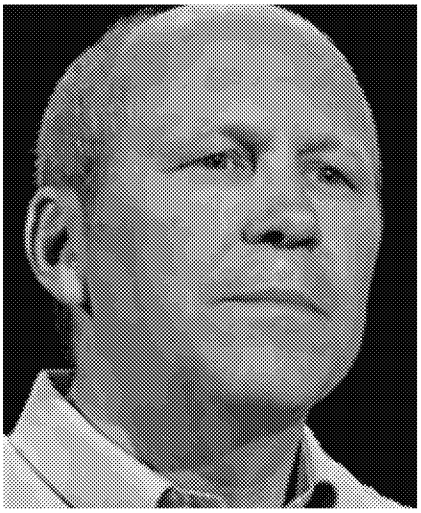
"We want the system to be stable so as to avoid knock-on effects on existing submissions, but do want to be able to update for, say, new technology in mixtures and new product categories," she says. "We will certainly need additional sector-specific guides for industry – the general support guide alone won't be enough to tell all CEPE members which category of coating should go into which poison centre category. We will probably work on that next year."

Echa has created a whole new website about poison centres, in partnership with stakeholders. This takes users through seven steps from knowing your obligation to submitting data, says Mr Sompolski, and it contains many other resources. The agency is also developing a 90-page guidance document.

It has completed consultation and is now processing the data it received from member states. Mr Sompolski hopes that this will be adopted at November's Caracal meeting and finalised by the end of the year – albeit, says Ms Robinson, that it will probably have a lot of footnotes about potential amendments in the light of future Caracal discussions.

"The requirements of Annex VIII are certainly not perfect and some of the issues in it make it difficult or even impossible to comply in some cases," she concludes. Ducc would like to see issues fixed by legal amendments to the text before the first registration deadline.

However with European Parliament elections and a new Commission and a complete stop on legislation in Brussels from March to July 2019, this could be a big ask. "We have supported harmonisation and still do, but what we have now is complex and hard to implement. There is much left to do and less than 15 months left," Ms Robinson says.



Dr Andrew Warmington

Commissioning editor, Chemical Watch

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